

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCRreporter@sjc.state.ma.us

SJC-13273

THOMAS COLPACK & others<sup>1</sup> vs. ATTORNEY GENERAL & another.<sup>2</sup>

Suffolk. May 4, 2022. - June 13, 2022.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt, & Georges, JJ.

Initiative. Constitutional Law, Initiative petition, Alcoholic beverages. Attorney General. Alcoholic Liquors, License.

Civil action commenced in the Supreme Judicial Court for the county of Suffolk on April 12, 2022.

The case was reported by Wendlandt, J.

Katherine A. Baker (Matthew T. Brown & Louis A. Rizoli also present) for the plaintiffs.

Anne Sterman, Assistant Attorney General (Adam Hornstine, Assistant Attorney General, also present) for the defendants.

Damien C. Powell, for Massachusetts Package Stores Association, amicus curiae, submitted a brief.

---

<sup>1</sup> Christine M. Limoges, Michael R. Limoges, James Garrett, and Stephen Garrett.

<sup>2</sup> Secretary of the Commonwealth.

WENDLANDT, J. Article 48 of the Amendments to the Massachusetts Constitution establishes procedures for "the popular initiative, which is the power of a specified number of voters to submit constitutional amendments and laws to the people for approval or rejection." Art. 48, I, of the Amendments to the Massachusetts Constitution. As part of those procedures, art. 48 requires that, before an initiative petition may be submitted to the voters, the Attorney General must certify that the proposed measure is "in proper form for submission to the people," including, *inter alia*, that it "contains only subjects . . . which are related or which are mutually dependent." Art. 48, The Initiative, II, § 3, as amended by art. 74 of the Amendments to the Massachusetts Constitution.

The plaintiffs, opponents of Initiative Petition 21-03, "An Initiative Petition for a Law Relative to 21st Century Alcohol Retail Reform," contend that the Attorney General's certification of the petition was improper because the petition does not meet the related subjects requirement of art. 48. We conclude that, although Initiative Petition 21-03 contains a variety of provisions affecting the licensing of retail sales of alcohol for off-premises consumption, the formula for assessing fines for violations of the licensing laws, and the conduct of a transaction for the sale of alcohol, these subjects form part of

an integrated scheme, so that the measure "presents a unified statement of public policy on which the voters can fairly vote 'yes' or 'no.'" Weiner v. Attorney General, 484 Mass. 687, 695 (2020). Accordingly, we affirm the Attorney General's certification of Initiative Petition 21-03 as in proper form to be submitted to the voters.<sup>3</sup>

1. Background. a. Initiative Petition 21-03. Initiative Petition 21-03 proposes to amend G. L. c. 138, the statute governing the sale of alcoholic beverages, in several respects.

The petition would change the Statewide limits on the total number of licenses for the sale of alcohol for off-premises consumption that any one retailer<sup>4</sup> could hold under G. L. c. 138, § 15. Currently, G. L. c. 138, § 15, provides that no single retailer may be granted, "in the aggregate," more than nine total such licenses, including "licenses for the sale of all alcoholic beverages" and "licenses for the sale of wines and malt beverages only." Initiative Petition 21-03 would amend G. L. c. 138, § 15, to increase the total aggregate number of "licenses for the sale of all alcoholic beverages" and "licenses

---

<sup>3</sup> We acknowledge the amicus brief submitted by the Massachusetts Package Stores Association.

<sup>4</sup> A retailer is a "person, firm, corporation, association, or other combination of persons, . . . or . . . an agent, employee, stockholder, officer or other person or any subsidiary." G. L. c. 138, § 15.

for the sale of wines and malt beverages" that any single retailer could be granted to twelve in 2023, fifteen in 2027, and eighteen in 2031. See Initiative Petition 21-03, §§ 1-3, 5-7. In addition, however, the petition would insert a new provision in G. L. c. 138, § 15, that would permit no single retailer to hold more than seven "licenses for the sale of all alcoholic beverages," with an exemption for those retailers who hold more than seven such licenses as of December 31, 2022. See Initiative Petition 21-03, § 4.

Initiative Petition 21-03 also would make several changes to the requirements governing retail sales transactions of alcoholic beverages for off-premises consumption. The petition would add a provision to G. L. c. 138, § 15, requiring that "[t]he in-store sale of alcoholic beverages by a licensee . . . shall be conducted through a face-to-face transaction between the customer and the licensee or . . . an authorized employee of the licensee who has attained the age of [eighteen] years," and accordingly would add a provision prohibiting "[i]n-store automated or self-checkout sales of alcoholic beverages by such licensees." See Initiative Petition 21-03, § 8. Initiative Petition 21-03 also would amend G. L. c. 138, § 34B, to add out-of-State drivers' licenses to the types of identification that reasonably could be relied upon by retailers of alcohol to

establish a purchaser's age.<sup>5</sup> See Initiative Petition 21-03, §§ 10, 11.

In addition, Initiative Petition 21-03 would modify the formula for calculating fines that could be assessed in lieu of suspension of a license to sell alcohol under G. L. c. 138, § 23, for violations of the provisions of G. L. c. 138 governing sales of alcoholic liquors. General Laws c. 138, § 23, currently provides that the fine for a violation of the licensing laws is "[f]ifty per cent of the per diem gross profit multiplied by the number of license suspension days, gross profit to be determined as gross receipts on alcoholic beverage sales less the invoiced cost of goods sold per diem." The petition would change the definition of gross profit to "gross receipts on all retail sales less the invoiced cost of goods sold per diem." See Initiative Petition 21-03, § 9.

b. Prior proceedings. By August 4, 2021, ten registered Massachusetts voters had signed and filed "An Initiative Petition for a Law Relative to 21st Century Alcohol Retail Reform" with the Attorney General; this petition subsequently

---

<sup>5</sup> Currently, G. L. c. 138, § 34B, permits retailers to avoid liability for sales of alcohol to underage purchasers if the retailer reasonably relies upon a Massachusetts driver's license, a Massachusetts "liquor purchase identification card," a United States passport, a passport issued by another country recognized by the United States, or a United States military identification card as evidence that the purchaser is at least twenty-one years old.

was designated Initiative Petition 21-03. On September 1, 2021, the Attorney General certified to the Secretary of the Commonwealth (Secretary) that Initiative Petition 21-03 was in proper form for submission to the people, that it contained only subjects that were related or mutually dependent, that it was not substantially the same as any measure qualified for submission to the people at either of the two preceding biennial elections, and that it contained only matters that were not excluded from the initiative process under art. 48.

In accordance with the requirements of art. 48, the Attorney General also prepared a summary of the petition to be printed on the forms used for gathering additional signatures and transmitted the summary to the Secretary with the September 1 certification letter. Also on September 1, 2021, the proponents of Initiative Petition 21-03 filed a copy of the petition with the Secretary, and the Secretary subsequently provided to them blank forms for the collection of signatures. On January 28, 2022, the Secretary transmitted Initiative Petition 21-03 to the clerk of the House of Representatives and informed the clerk that a sufficient number of signatures had been submitted to require the Secretary to transmit the petition to the Legislature.

Subsequently, on April 12, 2022, the plaintiffs filed a complaint in the county court challenging the Attorney General's

certification of Initiative Petition 21-03 and seeking to enjoin the Secretary from placing the petition on the November ballot. The defendants moved to dismiss the complaint on the ground that the Attorney General's certification was proper.<sup>6</sup> The single justice reserved and reported the case, without decision, for consideration by the full court.

2. Discussion. a. Standard of review. "We review the Attorney General's decision regarding whether to certify a ballot petition de novo, bearing in mind 'the firmly established principle that art. 48 is to be construed to support the people's prerogative to initiate and adopt laws.'" Oberlies v. Attorney Gen., 479 Mass. 823, 829 (2018), quoting Abdow v. Attorney Gen., 468 Mass. 478, 487 (2014).

b. Requirement that subjects be related or mutually dependent. The requirement in art. 48 that the subjects of an initiative petition must be related or mutually dependent

"was adopted during the constitutional convention of 1917-1918 in response to delegates' concerns about voter confusion and the dangers of 'log-rolling' in the

---

<sup>6</sup> In the alternative, the defendants asked the court to dismiss the complaint because it was "not timely filed." The complaint was filed more than seven months after the Attorney General certified Initiative Petition 21-03, and two and one-half months after the Secretary submitted the petition to the Legislature, notwithstanding this court's repeated admonitions concerning the importance of early filing of complaints challenging the Attorney General's certification decisions, in order to avoid disrupting the Secretary's preparation and circulation of the Information for Voters guide. See Dunn v. Attorney Gen., 474 Mass. 675, 686-687 (2016).

initiative process, i.e., the 'practice of including several propositions in one measure or proposed constitutional amendment so that the . . . voters will pass all of them, even though these propositions might not have passed if they had been submitted separately.'"

Dunn v. Attorney Gen., 474 Mass. 675, 679 (2016), quoting Carney v. Attorney Gen., 447 Mass. 218, 219 n.4 (2006), S.C., 451 Mass. 803 (2008).

In determining whether the subjects of an initiative petition contain "only subjects . . . which are related," we ask whether "one can identify a common purpose to which each subject of an initiative petition can reasonably be said to be germane." Weiner, 484 Mass. at 691, quoting Hensley v. Attorney Gen., 474 Mass. 651, 657 (2016). There is no bright-line rule to follow in making such a determination. Rather, the question is a matter of degree. See Weiner, supra, quoting Hensley, supra; Carney, 447 Mass. at 226.

"At some high level of abstraction, any two laws may be said to share a 'common purpose.'" Weiner, 448 Mass. at 691, quoting Carney, 447 Mass. at 226. "[R]elatedness cannot be defined so broadly that it allows the inclusion in a single petition of two or more subjects that have only a marginal relationship to one another, which might confuse or mislead voters, or which could place them in the untenable position of casting a single vote on two or more dissimilar subjects." Abdow, 468 Mass. at 499. Accordingly, "the related subjects



requirement is not satisfied by a conceptual or abstract bond."

Gray v. Attorney Gen., 474 Mass. 638, 648 (2016).

At the same time,

"[w]e do not construe the requirement so narrowly as to 'frustrate the ability of voters to use the popular initiative as "the people's process" to bring important matters of concern directly to the electorate' by effectively confining each petition to a single subject; we recognize that the delegates to the constitutional convention that approved art. 48 permitted more than one subject to be included in a petition."

Hensley, 474 Mass. at 657, quoting Abdow, 468 Mass. at 499.

Accordingly, in order to balance these concerns, in addition to considering whether the subjects of an initiative petition share a common purpose, we have examined two more specific questions. We have considered, first, whether "the similarities of an initiative's provisions dominate what each segment provides separately so that the petition is sufficiently coherent to be voted on 'yes' or 'no' by the voters." Hensley, 474 Mass. at 658, quoting Abdow, 468 Mass. at 500. Second, we consider whether the proposed initiative "express[es] an operational relatedness among its substantive parts that would permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy." Hensley, supra, quoting Abdow, supra at 501.

We have held that initiative petitions did not meet the related subjects requirement where they combined two or more

topics that were substantively distinct, even though, at some high level of abstraction, the topics could be said to share a common purpose. For instance, in Carney, 447 Mass. at 231-232, we considered an initiative petition that proposed to amend criminal statutes penalizing animal abuse and dismantle the business of parimutuel dog racing. Although the Attorney General decided that these provisions were adequately related to "promoting the more humane treatment of dogs," id. at 224, we concluded that the petition did not satisfy art. 48 because there was "no meaningful operational relationship" between the provisions concerning animal abuse and those abolishing dog racing, id. at 231.

Similarly, in Gray, 474 Mass. at 638, we considered an initiative petition that sought to end the use of Common Core State Standards in defining the elementary and secondary educational curriculum in the Commonwealth, and require the Commissioner of Elementary and Secondary Education to release publicly every year the questions from the prior year's comprehensive assessment tests. Although we agreed that the content of the curriculum and assessment of student performance were "interconnected" at a conceptual level, "the related subjects requirement is not satisfied by a[n] . . . abstract bond." Id. at 648. We determined that, at "the operational level," the petition combined "a proposed policy of rejecting a

particular set of curriculum standards . . . with a proposed policy of increasing transparency in the standardized testing process at what is likely to be a greatly increased cost, regardless of the content of the curriculum standards used. These are two separate public policy issues." Id. at 648-649. Thus, we concluded that, while both were "controversial public issues in the domain of elementary and secondary education," the use of the Common Core standards and the disclosure of the content of the prior year's assessment tests were "two separate public policy issues" that were "substantively distinct," such that combining both issues in one petition did not offer voters a unified statement of public policy. Id. at 649.

Similarly, in Anderson v. Attorney Gen., 479 Mass. 780, 798-799 (2018), we held that an initiative petition proposing a constitutional amendment that would have established a graduated income tax on incomes over \$1 million and would have earmarked revenues from that tax, subject to appropriation, for education and transportation did not meet the related subjects requirement. We concluded that "[t]he two subjects of the earmarked funding themselves [were] not related beyond the broadest conceptual level of public good," and also were "entirely separate from the subject of a stepped rather than a flat-rate income tax." Id. at 798.

We also have determined that initiative petitions containing multiple provisions involving a variety of different regulatory issues nonetheless may meet the related subjects requirement of art. 48, so long as the provisions are part of an "integrated scheme" of regulation. See Weiner, 484 Mass. at 693, quoting Hensley, 474 Mass. at 659. In Hensley, supra at 658, for example, we concluded that an initiative petition that "la[id] out a detailed plan to legalize marijuana . . . for adult use" and also created systems "that would license and regulate the businesses involved in the cultivation, testing, manufacture, distribution, and sale of marijuana and that would tax the retail sale of marijuana to consumers" "easily satisfie[d] the related subjects requirement of art. 48." We rejected the plaintiffs' contention that the provision allowing nonprofit medical marijuana centers to become licensed as recreational marijuana distributors so that they could participate in the commercial market was unrelated to the overall legalization plan, because the provision was "simply one piece of the proposed integrated scheme." Id. at 659. "The fact that the initiative's proponents might have chosen instead to prohibit medical marijuana treatment centers from participation in the retail market," we observed, did not "affect the coherence of the proposal as a unified statement of

public policy that is a proper subject for a 'yes' or 'no' vote." Id.

Likewise, in Oberlies, 479 Mass. at 826-827, we considered an initiative petition that sought to impose limits on the number of patients assigned to each nurse in different hospital settings, and that also prescribed that implementation of these nurse-patient ratios could not result in a reduction in staffing levels of other health care workers at the facility. We concluded that the workforce reduction restriction was "simply one piece of the proposed integrated scheme," id. at 832, quoting Hensley, 474 Mass. at 659, and operationally related to the rest of the proposal "[b]ecause it anticipate[d] and addresse[d] a potential consequence of the nurse-patient staffing ratios," namely that, "[i]f hospitals were economically burdened by hiring more registered nurses, they might attempt to compensate by reducing the numbers of other staff," Oberlies, supra at 832.<sup>7</sup>

---

<sup>7</sup> By contrast, we held in Oberlies that a second initiative petition did not meet art. 48's related subjects requirement because, in addition to provisions nearly identical to those in the first petition, it also included a section requiring that hospitals accepting funds from the Commonwealth file annual reports of their financial assets. We concluded that this financial disclosure requirement had only a marginal relationship to the nurse-patient staffing ratios because these ratios were mandatory regardless of a hospital's financial condition. Oberlies, 479 Mass. at 835-836.

More recently, in Weiner, we reviewed an initiative petition that would have created a new type of license for the sale of beer and wine by retail food stores for off-premises consumption, gradually increased and eventually eliminated the per-retailer limit on licenses for the retail sale of alcohol for off-premises consumption, required certain forms of identification as proof of age for all off-premises consumption sales, and provided additional resources for the enforcement of laws regulating the sale of alcoholic beverages. See Weiner, 484 Mass. at 689-690. We agreed with the Attorney General that the petition satisfied art. 48 because its numerous provisions all related to the common purpose of lifting restrictions on the number and allocation of licenses for the retail sale of alcoholic beverages to be consumed off-premises. See id. at 692. Although the new age-verification provision and the increased funding for enforcement did not directly lift these restrictions, we concluded that they were operationally related to this common purpose because they "anticipate[d] and mitigate[d] the foreseeable consequences of lifting restrictions on licenses." Id. Thus, each provision was part of a "proposed scheme to lift restrictions on off-premises licenses for the retail sale of alcoholic beverages," and the entire petition "set[] forth a unified statement of policy and [was]

sufficiently coherent to permit a 'yes' or 'no' vote." Id.  
at 693.

c. Application. Unlike the initiative petitions at issue in Carney, 447 Mass. at 231-232; Gray, 474 Mass. at 638; and Anderson, 479 Mass. at 798-799, Initiative Petition 21-03 does not yoke together substantively distinct subjects unrelated to a consistent public policy. Rather, as with the initiative petition in Weiner, 484 Mass. at 689-690, Initiative Petition 21-03 presents an integrated scheme whose various provisions serve the common purpose of loosening some of the current restrictions on the number and allocation of licenses for the retail sale of beer and wine for off-premises consumption, while taking steps to mitigate the potential negative effects of this expansion.

Initiative Petition 21-03 creates a graduated transition by which the total number of licenses that any individual retailer of alcoholic beverages for off-premises consumption could hold would increase over a period of almost ten years. The petition also would broaden, to some extent, the range of potential purchasers by adding out-of-State drivers' licenses to the types of identification on which sellers reasonably could rely, rather than turning away tourists from within the United States, while permitting tourists from other countries to use their passports as proof of being of the proper age to purchase alcohol. These

provisions, as the title of Initiative Petition 21-03 indicates, are intended to modernize alcohol sales in the Commonwealth and to make purchases more convenient, so that purchasers could obtain alcohol at other types of stores, such as grocery stores, where purchasers already shop, without requiring multiple trips to different stores.

The other provisions of Initiative Petition 21-03 arguably serve to moderate the effect of these changes. The petition would limit the impact of the increase in the total aggregate number of licenses for off-premises consumption that could be held by a single retailer by increasing the restrictions on the number of licenses for the sale of "all alcoholic beverages" that the retailer could hold, such that the primary effect of the change would be to expand the availability of licenses for the sale of beer and wine.

Initiative Petition No. 21-03 also would mitigate the risk of increased sales to underage drinkers posed by additional licenses for retail sales held by a single license holder, such as a local grocery chain, and the larger pool of purchasers by requiring all sales to be made through face-to-face transactions. The petition also would encourage increased vigilance by retailers for whom alcoholic beverages are not their primary product by basing fines on the retailer's gross receipts for all retail sales, rather than on the gross receipts



for sales of alcoholic beverages only. Thus, these provisions are operationally related to those that would increase the number of licenses for the purchase of alcohol that a single retailer could hold and would permit sellers to rely upon an out-of-State driver's license to verify a purchaser's age. See Weiner, 484 Mass. at 692-693 (initiative petition's age-verification and enforcement provisions were operationally related to provisions lifting restrictions on licenses for retail sale of alcohol).

We therefore conclude that there is sufficient similarity and operational relatedness among the various provisions in Initiative Petition 21-03 to permit a reasonable voter to affirm or reject the entire petition as a unified statement of public policy.

The plaintiffs argue that the different provisions of Initiative Petition 21-03 lack a uniform purpose and are not operationally related because the petition "impermissibly combines multiple contradictory positions: both lifting and tightening restrictions on licenses" and "strengthening and loosening protections against age-related violations." As discussed, however, these purportedly contradictory provisions actually are operationally related. Moreover, an initiative petition need not focus solely on loosening (or tightening) restrictions in order to meet the related subjects requirement

of art. 48. See Weiner, 484 Mass. at 694, quoting Mazzone v. Attorney Gen., 432 Mass. 515, 528-529 (2000) ("The provisions of an initiative petition need not be 'drafted with strict internal consistency'"). Adopting such a narrow interpretation of the related subjects requirement would unduly interfere with the freedom of proponents to develop petitions within the parameters of art. 48.

The plaintiffs also argue that the risk mitigation provisions presented in Initiative Petition 21-03 are ill-suited to address concerns about sales of alcohol to underage minors, and that this disconnect renders them unrelated. The plaintiffs contend, for example, that, unlike the uncapped class of licenses that would have been created by the initiative petition at issue in Weiner, the license expansion provisions in Initiative Petition 21-03 would yield only an incremental increase in the number of available licenses for retail sales for off-premises consumption, due to other statutory caps on the over-all number of licenses that a city or town could permit a single retailer to operate,<sup>8</sup> and therefore does not give rise to the same enforcement concerns that were present in Weiner. The

---

<sup>8</sup> General Laws c. 138, § 15, prohibits granting more than one license in a town or more than two licenses in a city to a single retailer. General Laws c. 138, § 17, sets population-based quotas on the number of licenses that may be issued in each city or town.

plaintiffs also maintain that the ban on automated checkouts would be ineffective in addressing the risk of sales of alcohol to underage purchasers because the new provision does not actually require sellers to verify a potential purchaser's age. In addition, the plaintiffs maintain that there is no adequate justification for the change in the formula used to calculate fines for violations of the licensing laws, which would have a heavier impact on sellers whose business is not focused primarily on sales of alcoholic beverages.

This court's jurisprudence does not require a perfect fit between the risks created by a proposed measure and the provisions designed to mitigate those risks in order for those provisions to be viewed as operationally related. In Weiner, 484 Mass. at 694, for example, the plaintiffs maintained that the initiative petition at issue in that case would apply new age-verification requirements to all off-premises retailers and not just to what would have been the class of newly created food store licensees, and that provisions for increased funding and more investigators for enforcement purposes would similarly not have been limited to policing the new licensees. We concluded, however, that "these administrative details" merely concerned "the scope of the measure and [did] not vitiate the relatedness of [the initiative petition] as a whole." Id. "So long as the provisions that have been included are sufficiently related,"

"[i]t is not for the courts to say that logically and consistently other matters might have been included or that particular subjects might have been dealt with differently.'" Id., quoting Massachusetts Teachers Ass'n v. Secretary of the Commonwealth, 384 Mass. 209, 220 (1981).<sup>9</sup>

Finally, we disagree with the plaintiffs' contention that Initiative Petition 21-03 would place voters "in the untenable position of casting a single vote on two or more dissimilar subjects." See Weiner, 484 Mass. at 691, quoting Abdow, 468 Mass. at 499. To the contrary, there is a logical relationship between the expansion of licensing provisions and the increased protection and enforcement measures to prevent underage consumption of alcohol. See Weiner, supra at 692 (expansion of available licenses could result in increase in unlawful purchases of alcohol by individuals under the age of twenty-one,

---

<sup>9</sup> There are also persuasive counterarguments that can be made in response to each of the plaintiffs' assertions. In suggesting that Initiative Petition 21-03 would create little increased risk of sales of alcohol to underage purchasers, the plaintiffs seemingly disregard the potential impact of allowing sellers to rely on out-of-State motor vehicle licenses to verify a buyer's age. Requiring face-to-face sales transactions rather than automated checkouts arguably would help to detect and deter underage purchases. Basing fines on receipts from all retail sales, and not just on sales of alcoholic beverages, potentially could provide a strong incentive for sellers who are not focused primarily on sales of alcoholic beverages, and who therefore may have less experience in preventing purchases by underage consumers, to be particularly vigilant.

which could be mitigated by age-verification requirements and greater enforcement efforts).

Thus, the initiative petition presents voters with an integrated scheme that combines an increase in available licenses per retailer for the sale of alcohol for off-premises consumption, and an expansion in the types of identification that may be used to verify a purchaser's age, with other protective measures to prevent and deter underage purchases; it does not require a voter to cast a single vote on dissimilar subjects. Compare Hensley, 474 Mass. at 659 ("A voter who favors the legalization of marijuana but not the participation in the retail market of entities registered as medical marijuana treatment centers is free to vote 'no' if he or she thinks that the dangers of mixing medical marijuana distribution with retail distribution overcome the benefits of the proposal, but the proposed act does not place anyone 'in the untenable position of casting a single vote on two or more dissimilar subjects'" [citation omitted]).

3. Conclusion. The matter is remanded to the county court for entry of a judgment declaring that the Attorney General's certification of Initiative Petition 21-03 was in compliance with the requirements of art. 48.

So ordered.